

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____ ELOUISE PEPION COBELL, <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 1:96CV01285 (RCL)
)	(Judge Lamberth)
GALE A. NORTON, Secretary of the Interior, <u>et al.</u> ,)	
)	
Defendants.)	
_____)	

**DEFENDANTS' NOTICE REGARDING
PLAINTIFFS' EMERGENCY NOTICE REGARDING ONGOING
RETALIATION IN VIOLATION OF THIS COURT'S ORDERS**

On November 15, 2004, Plaintiffs filed their Emergency Notice Regarding Ongoing Retaliation in Violation of This Court's Orders ("Second Emergency Notice"), accusing the Department of the Interior of withholding a trust check and delaying processing of an appraisal for Carmen Patricio, in alleged retaliation for the Court's September 29, 2004 Order. In response to Plaintiffs' Second Emergency Notice, Defendants file the attached Declaration of Nina Siqueros, Superintendent with the Bureau of Indian Affairs at the Papago Agency in Arizona. ("Siqueros Declaration") (Exhibit 1).¹ The Siqueros Declaration disproves Ms. Patricio's claims of retaliation.

The Siqueros Declaration conclusively establishes that Ms. Patricio's trust check was handled in the ordinary course of business and processing of her trust check was not delayed as a result of the Court's September 29, 2004 Order. Siqueros Declaration at ¶¶ 4-10. Moreover, it

¹ Exhibit 1 is a redacted version of the Siqueros Declaration. Defendants have concurrently filed a motion requesting an order to file the un-redacted Siqueros Declaration under seal.

proves that her appraisal was processed in the ordinary course of business and that any delay in providing her a copy of the completed appraisal was not done in retaliation but in order to comply with the Court's September 29, 2004 Order. Id. at ¶¶ 11-20. The appraisal document was completed in connection with the proposed partition of Ms. Patricio's land, id. at ¶11, a land transaction regulated by 25 CFR Part 152 and subject to the Court's September 29, 2004 Order prohibiting communications concerning such transactions. See 25 CFR Part 152.33. On October 22, 2004, the Court clarified its September 29, 2004 Order, and indicated that it did not prohibit written communications concerning the appraisal of trust lands. Order of October 22, 2004 at 5. On November 12, 2004, the BIA mailed Ms. Patricio a copy of the appraisal. Siquieros Declaration at ¶18.

Plaintiffs have failed to establish that there was retaliation against Ms. Patricio and the Siquieros Declaration establishes that her trust checks were processed in the ordinary course of business. If, however, the Court decides to make findings of fact concerning Plaintiffs' allegations, Defendants' respectfully request that the Court first conduct an evidentiary hearing.

Dated: December 14, 2004

Respectfully submitted,

PETER D. KEISLER
Assistant Attorney General
STUART E. SCHIFFER
Deputy Assistant Attorney General
J. CHRISTOPHER KOHN
Director
SANDRA P. SPOONER
Deputy Director
D.C. Bar No. 261495
JOHN T. STEMPLEWICZ
Senior Trial Counsel

/s/ Timothy E. Curley
TIMOTHY E. CURLEY
D.C. Bar No. 470450
Trial Attorney
Commercial Litigation Branch
Civil Division
P.O. Box 875
Ben Franklin Station
Washington, D.C. 20044-0875
(202) 514-7194

CERTIFICATE OF SERVICE

I hereby certify that, on December 14, 2004 the foregoing *Defendants' Notice Regarding Plaintiffs' Emergency Notice Regarding Ongoing Retaliation in Violation of this Court's Orders* was served by Electronic Case Filing, and on the following who is not registered for Electronic Case Filing, by facsimile:

Earl Old Person (*Pro se*)
Blackfeet Tribe
P.O. Box 850
Browning, MT 59417
Fax (406) 338-7530

/s/ Kevin P. Kingston
Kevin P. Kingston

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ELOUISE PEPION COBELL, et al.,

Plaintiffs

v.

GALE NORTON, Secretary
of the Interior, et al.,

Defendants.

No. 1:96CV01285
(Judge Lamberth)

DECLARATION OF NINA SIQUIEROS

I, Nina Siqueros, pursuant to 28 U.S.C. § 1746 do declare as follows:

1. I am the Superintendent with the Bureau of Indian Affairs (BIA) at the Papago Agency in Arizona. My duties and responsibilities include planning, organizing, staffing, budgeting and directing a variety of programs and services, including realty services. In this capacity, I oversee all Agency administrative programs, including realty operations and allotment payout procedures.
2. I have prepared this declaration in response to Ms. Carmen Patricio's allegations that the Papago Agency is retaliating against her. Ms. Patricio alleges that we have withheld her royalty payment and that we have improperly withheld her appraisal.
3. After receiving notice that Ms. Patricio believed my office and staff had retaliated against her, I asked my staff to investigate the facts surrounding the allegations and report the facts back to me. I will address each one in turn.

Alleged Withholding of Ms. Patricio's Royalty Payment

4. The Branch of Administration of the Papago Agency receives lease payments on behalf of landowners. Ms. Carmen Patricio is among numerous beneficiaries on whose behalf we receive income processed through the Papago Agency. Ms. Patricio's payment is generated as a result of preliminary royalties paid by Asarco, Inc. (Asarco) for copper mined on San Xavier Mission Mine located on the Tohono O'odham Nation, in which Ms. Patricio owns an interest.

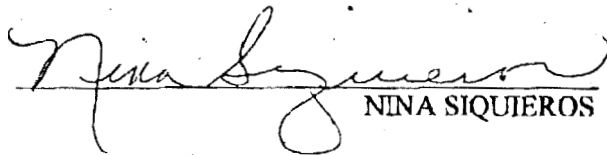
5. The royalty payments received by the Papago Agency are normally made by Electronic Funds Transfer (EFT) to Asarco's Special Deposit Account. This payment is subsequently processed by the BIA through the Integrated Records Management System (IRMS) Lease Distribution system. The checks to each landowner are generated by the Office of the Special Trustee (OST) in Albuquerque, New Mexico.
6. When preparing to make a deposit, Asarco provides notice to the Papago Agency Superintendent by letter that a payment will be made on a certain date. Once the deposit appears in Asarco's Special Deposit account, in the Trust Funds Accounting System (TFAS), BIA will run the lease distribution for that payment through the IRMS Lease Distribution system. After reconciliation, my office notifies the BIA Office of Information Operations (OIO) in Reston, Virginia to run an interface with the BIA database and the OST database; this interface is an overnight process. Checks are generated by OST in Albuquerque, New Mexico and mailed to the individual landowner the following day.
7. My office has verified that Asarco posted the August 2004 Royalty payment to TFAS on September 28, 2004. After the deposit was made from Asarco, our office ran the lease distribution for that payment. On October 6, 2004, [REDACTED]
8. My office has also verified that Asarco posted the September 2004 Royalty payment to TFAS on October 25, 2004. After the deposit was made from Asarco, our office ran the lease distribution for that payment. On November 15, 2004, [REDACTED]
9. At no time did BIA or the Papago Agency attempt to delay or withhold any royalty payments. However, over the past few years, Asarco has failed to make timely lease and royalty payments. Through meetings with the landowners and the San Xavier Allottee Association, Asarco has informed us that this is due to a serious reduction in the price of copper. Asarco proposed renegotiations for a lower rate; however, the landowners did not accept the renegotiation.
10. Ms. Patricio's trust payments were processed in the ordinary course of business and the processing time is unrelated to any court orders in Cobell v. Norton.

Alleged Withholding of Ms. Patricio's Appraisal

11. Upon review, my office has determined that on August 7, 2003, we received a request from Ms. Patricio for a review and concurrence of an "appraisal" done on Allotment # 64 done by Grubb and Ellis, Tucson, Arizona, for purposes of partitioning the parcel.

12. Our Realty Officer forwarded the Grubb and Ellis document to the Office of the Special Trustee for American Indians (OST), Office of Appraisal Services.
13. On January 27, 2004, the Office of Appraisal Service notified our office that the Grubb and Ellis document did not constitute an appraisal. The Office of Appraisal Services had concluded that the Grubb and Ellis document was merely a market analysis report that did not meet the BIA standards for an appraisal.
14. We then prepared an appraisal request for OST dated March 4, 2004. On May 11, 2004 through a follow-up of our request, it came to our attention that OST had not received our appraisal request dated March 4, 2004 so we submitted another request for an appraisal for a partition of Allotment 64.
15. On September 1, 2004, my office received an appraisal from OST for the partition of Allotment 64.
16. As of September 1, 2004, Ms. Patricio had not provided us with notification that she had obtained agreement to the partition of the allotment from 100% of the co-owners, and at the time of her retaliation claim she had still not provided our office with such notice. In the ordinary course of business, we would not automatically send out appraisals to landowners until we have received notification that there is consent by 100% of the owners to partitioning of the land. We would, however, provide a copy of the appraisal, upon request of an owner.
17. Ms. Patricio had contacted our office and requested a copy of the appraisal and we agreed to provide a copy to her. However, before we provided a copy to her, on September 30, 2004, our office received departmental guidance that the Court had issued an order prohibiting communications concerning the sale, exchange, transfer, and conversion of Indian trust land. We interpreted that guidance as not permitting us to communicate with Ms. Patricio by sending out the appraisal to her.
18. On November 12, 2004, the appraisal was mailed to Ms. Patricio at the direction of the Western Regional Office.
19. Our office did not retaliate against Ms. Patricio in handling the copy of her appraisal, but sought to comply with the Court's order concerning communications on land transactions.
20. To my knowledge, as of this date Ms. Patricio still does not have consent to the partition from 100% of the co-owners of the land. Until such consent is obtained, the partition cannot take place, regardless of when Ms. Patricio received a copy of her appraisal.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.


NINA SIQUIEROS

Executed this 14th day of December, 2004.